

20590, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section at the street address given above. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR part 512).

Comments on this notice will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date. Those persons desiring to be notified upon receipt of their written comments in the Docket Section should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receipt, the docket supervisor will return the postcard by mail.

**Authority:** 49 U.S.C. 30111, 30168, delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on December 20, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

50 CFR Part 17

262-94

#### Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition to List As Endangered or Threatened the Contiguous United States Population of the Canada Lynx

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 12-month petition finding.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces a 12-month finding for a petition to add the contiguous United States population of the Canada lynx (*Lynx canadensis*) to the List of Threatened and Endangered Species. The Service finds the petitioned action of listing the Canada lynx in the 48 contiguous States is not warranted.

**DATES:** The finding announced in this document was made on December 20, 1994.

**ADDRESSES:** Information, comments, or questions concerning this petition should be submitted to the Regional Director, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. The petition, 12-month finding, supporting data, and comments are

available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ralph Morgenwick, Regional Director, Region 6, telephone (303) 236-8189.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 4(b)(3)(B) of the Endangered Species Act (Act) of 1973 as amended (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the List of Threatened and Endangered Species that contains substantial scientific or commercial information indicating that the petitioned action may be warranted, a finding must be made within 12 months of the date of receipt of the petition on whether the petitioned action is (i) not warranted, (ii) warranted, or (iii) warranted but precluded by the efforts to revise the list and expeditious progress is being made in listing and delisting species. Upon making the finding, a notice shall be promptly published in the **Federal Register**. With this notice, the Service announces its 12-month finding on the petition to list the Canada lynx is not warranted. This finding is based on various documents, including published and unpublished studies, agency files, field survey records, and consultations with other Federal and State agencies. This notice summarizes information contained in the 12-month finding and represents the conclusion of the Service's status review.

In August 1991, the U.S. Fish And Wildlife Service (Service) received a petition from several conservation organizations requesting that the Service list the lynx of the North Cascades ecosystem as an endangered species and designate critical habitat.

On October 6, 1992, the Service published a notice of a petition finding indicating that there was not substantial information to indicate that listing the North Cascades population of the Canada lynx as endangered may be warranted (57 FR 46007). On July 9, 1993, the Service published a notice of a second finding on the North Cascades petition after evaluating new information and again found that there was not substantial information to indicate that listing the population may be warranted (58 FR 36924).

Following publication of the notice, the petitioners filed suit challenging the finding. A settlement agreement was reached on November 30, 1993, where the Service agreed to conduct a full status review of the lynx throughout its range in the lower 48 States and to determine whether it qualified as

endangered or threatened pursuant to 16 U.S.C. Part 1533(a). On February 2, 1994, the Service published a notice (59 FR 4887) announcing continuation of a status review initiated in 1982. The Service reviewed and considered public comments during its evaluation of the status of the lynx in the contiguous U.S.

A petition dated April 23, 1994, was received by the Service from the Biodiversity Legal Foundation on April 27, 1994. The petition requested that the conterminous U.S. population of the North American lynx (*Felis lynx canadensis*) be listed as a threatened or endangered species. The petition provided numerous reasons for why the Canada lynx population in the contiguous U.S. should be added to the List of Threatened and Endangered Species. The petitioners also requested that the southern Rocky Mountain population of the lynx be protected by emergency listing because it is severely imperiled, the population level is low, and it is reproductively isolated.

Notice of a 90-day finding published in the August 26, 1994, **Federal Register** (59 FR 44123) found that there was substantial information to indicate that listing the contiguous population of the Canada lynx may be warranted. However, the notice also indicated that the petition did not present substantial information to indicate the emergency listing of the Canada lynx in the southern Rockies is warranted.

The lynx, generally considered rare because of its secretive nature, is actually common throughout its Northern American range. Lynx occupy the boreal regions of North America, commonly referred to as the Canadian and Hudsonian Life Zones. These habitats are characterized by dense coniferous forests and wet bogs. Cold climates, deep snow, and wildfire are major influences on these habitats. Lynx are found within these habitats from Newfoundland, Labrador, and Quebec on the east to Alaska and British Columbia on the west; from the Arctic treeline south into portions of the contiguous U.S. (Brittall et al. 1989).

Specific to the U.S., lynx distribution represents the fringe of the population occurring in its historic range. Consequently, the lynx does not commonly occur within this southern limit of its range due to the lack of favorable habitats. Favorable habitat conditions for the lynx dissipate with decreasing latitude. Thus, the lynx is restricted to higher elevations the more southern the latitude. The most southern range extensions for the species are found in the Rocky Mountains and associated high elevations. The distribution and

population numbers of the lynx closely follow that of the snowshoe hare, its primary food item. During population highs, snowshoe hare may occupy marginal habitats thereby, allowing the lynx to widen their distribution (Brittall et al. 1989). During years of abundance, lynx may extend their distribution and occur in higher densities along the southern extension of their range. This fluctuation of population size and distribution is attributed to dispersal of predominately young animals from the resident Canadian population. Local "irruptions" or invasions of lynx have been reported in the northern U.S. following population highs further north in Canada. Population cycles may not be as noticeable in the southern extremes of the lynx range because such habitat is not an important part of its range and U.S. resident populations are initially low.

The historic range of the lynx in the contiguous U.S. has generally been recognized as including New England (Maine, New Hampshire, Vermont and New York), the Great Lakes (Michigan, Wisconsin and Minnesota), the Rocky Mountains (Idaho, Montana, Wyoming, Utah, and Colorado) and the Northwest Region (Washington and Oregon). There is evidence that presence of lynx in the contiguous U.S. corresponded to cyclic dispersals from Canada (particularly in the Great Lakes region). Thus, the Service believes that some of these States within the species' historic range never supported viable resident populations of lynx over time.

The Northeastern and Great Lakes forests are sub-boreal forests and therefore fire regimes, important for the creation of snowshoe hare habitat, do not function as in true boreal forests. Most of these original sub-boreal forests were destroyed by lumbering and agricultural activities by the late 1880's and early 1900's. The lynx was already extirpated from the New England States (except for Maine) by the turn of the century.

Lynx were extremely scarce in the first half of the century in Montana. By 1979, the population was estimated to be between 1800 and 2500 animals. Lumbering activities and wildfire of the early 1920's, has affected Montana's present population of lynx which is the largest in the contiguous U.S. Montana also has the largest amount of available habitat (Giddings 1994). In the Cascades (Northwest Region), lynx benefit from relative isolation of large undisturbed tracts of habitat (approximately 3,673 square miles) and in the State of Washington, there is about 6,500 square miles of lynx habitat (Brittall et al. 1989).

The Canada lynx (*Lynx canadensis*) is one and the same species (a monotypic species) throughout its entire range in North America. The term "species" under the Act includes any subspecies of fish, wildlife, and plants, and any distinct population segment of any species of vertebrate fish and wildlife which interbreeds when mature. The Service limited its status review of the lynx to the 48 contiguous States, as directed in the settlement agreement and requested in the petition.

#### Summary of Factors Affecting the Species

The following is a summary and discussion of the five factors set forth in section 4(a)(1) of the Act and their applicability to the current status of the Canada lynx in the contiguous 48 States.

##### A. Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The Canada lynx is widely distributed throughout the northern boreal forests of Canada and Alaska. Its extreme southern limits are the U.S./Canada border areas with the southern-most extensions found in the Rocky Mountains. Historically, lynx populations were minimal in the contiguous U.S. due to a lack of suitable habitat. During years of lynx abundance in Canada increased densities of resident populations resulted along the southern boundary of its range. There is evidence that the increased presence of lynx in the contiguous U.S. corresponds to cyclic dispersals from Canada. At the turn of the century and especially in the Northeastern portion of the U.S., habitat loss due to human settlement and forest clearing reduced the southern range of the lynx. Since the 1970's, this trend has reversed in some States. Presently, Maine, Montana and Washington have resident lynx populations. In Montana prior to 1950, lynx were considered to be extremely rare. Today, however, an estimated 700 to 1,050 lynx could occupy approximately 37,000 square miles of montane forest habitat in Montana (Giddings 1994).

##### B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

In the contiguous U.S., lynx inhabit fairly remote, isolated areas. Before 1977, pelt prices were low, approximately \$12.00 a piece and lynx were harvested incidental to other furbearers. In 1977, all felids, including lynx, were listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Appendix II species may

be internationally traded provided CITES export permits are issued. The issuance of permits provides a means of monitoring trade and determining if it is having a significant impact on the species. In conjunction with CITES, States are required to have a management program and a harvest season for the species. Presently only five States have a trapping season for lynx—Alaska, Idaho, Minnesota, Montana, and Washington. In 1984, Minnesota closed its lynx season and Washington followed suit in 1990. Presently only Idaho and Montana of the lower 48 States allow a limited annual harvest of two and three animals, respectively. These quotas include the incidental take of lynx by bobcat trappers. From 1982 to 1992, only three lynx were trapped in Idaho. From 1993 to 1994, only four animals were taken in Montana. These low harvest levels are contributed to the low level of hunting and trapping occurring in the remote areas inhabited by lynx. Hunting and trapping pressure on the lynx has been historically low in the U.S. and there is little evidence that these activities pose a threat to the continued existence of this species in the wild.

##### C. Disease or Predation

The Canada lynx could be displaced or eliminated by expansion of competitors such as the bobcat (*Lynx rufus*) or coyote (*Canis latrans*) into their present range. However, lynx are more restricted to areas that receive deep snow cover where they are more highly adapted than are bobcats. Neither disease nor predation is known to be a threat to the lynx.

##### D. The Inadequacy of Existing Regulatory Mechanism

The lynx is protected in each State where it occurs in the lower 48 contiguous States. Seven States classify it as threatened or endangered or a species of concern. Idaho and Montana have a trapping season with annual Statewide harvest quotas of two and three animals, respectively. Hunting and trapping with dogs and taking with firearms is illegal in every State except one in which the lynx occurs. Few if any States ever had a bounty system for the species. In addition to State protection, the lynx has been listed in Appendix II of CITES since 1977, and its status and harvest levels have been monitored by the Service's Office of Scientific Authority.

### ***E. Other Natural or Manmade Factors Affecting its Continued Existence***

Lynx distribution has not significantly changed from historic ranges except for periodic peripheral shifts of distribution with cyclical changes of its chief prey, the snowshoe or varying hare (*Lepus americanus*), and local losses due to loss of habitat in southern-most areas. Fire suppression in the contiguous 48 States has had some effect on lynx numbers, since early successional habitats are important to lynx due to a greater abundance of snowshoe hares in these areas. Although early regeneration stages of habitat are preferred by hares, lynx hunt primarily in more open mature and later successional stages of forest.

### **Finding**

The Act requires the Service to make determinations regarding listings solely on the basis of the best available scientific and commercial data after conducting a review of the status of the species and after taking into account those efforts being made by State and Federal agencies to protect the species. The Act also allows for the Service to list "distinct population segments" of vertebrate fish and wildlife.

The Service was petitioned to list the Canada lynx in the 40 contiguous States as a vertebrate population pursuant to the Endangered Species Act. The Service conducted a status review of the Canada lynx in the contiguous U.S. After carefully evaluating the best available scientific and commercial information regarding the past, present and future threats faced by this species, the Service finds that listing of the Canada lynx in the contiguous U.S. is not warranted. The Service also finds that the petition did not present substantial information that the southern Rocky Mountain population of the Canada lynx meets the definition of a "species" under section 3(15) of the Act.

The Canada lynx is naturally low density-occurring carnivore throughout the northern boreal forests of Canada and Alaska with its extreme southern limits occurring south of the U.S./Canada border. It was never a common species in the contiguous U.S. because of limited suitable habitat and, except for in Maine, Montana, and Washington, little evidence of breeding populations south of the border exists. Presence of the species in most of the contiguous 48 States corresponds to cyclic dispersals from Canada.

At the turn of the century, habitat loss due to human settlement and forest clearing reduced the range of lynx in

southern areas. However, the lynx currently occupies much of its original historic range. The Service is unable to substantiate that trapping, hunting, poaching, and present habitat destruction threaten the continued existence of the lynx in the wild in the contiguous U.S. Consequently, the Service finds that listing the Canada lynx in the contiguous U.S. is not warranted. The Service's 12-month finding contains more detailed information regarding the above decisions. A copy may be obtained from the Division of Endangered Species (see ADDRESSES section).

A draft notice of our finding is attached for your review and prompt publication in the **Federal Register**. The petitioners will be notified of our finding upon its publication.

### **Author**

This document was prepared by (see ADDRESSES section).

### **Authority**

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 et seq.).

Dated: December 20, 1994.

**Mollie H. Beattie.**

*Director, Fish and Wildlife Service.*

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### **50 CFR Part 17**

### **Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Data Pertaining to the Subspecies Taxonomy of the California Gnatcatcher**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of reopening of public comment period.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) gives notice that the comment period on the data pertaining to the subspecies taxonomy of the California gnatcatcher is reopened through January 26, 1995. The Service has reopened the comment period to ensure that the public may review and comment on significant comments and analyses received during the original public comment period, which was open from June 2, to December 1, 1994.

**DATES:** Comments and materials must be received by January 26, 1995.

**ADDRESSES:** Comments and materials concerning the original public comments and analyses should be submitted to the U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730

Loker Avenue West, Carlsbad, California 92008. The data, original and subsequent public comments, and other materials received will be available for public inspection during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Gail Kobetich, Field Supervisor, at the address listed above (telephone 619/431-9440, facsimile 619/431-9624).

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

On March 30, 1993, the U.S. Fish and Wildlife Service (Service) published a final rule in the **Federal Register** determining the coastal California gnatcatcher to be a threatened species (58 FR 16741). In its decision to list the gnatcatcher, the Service relied, in part, on taxonomic studies conducted by Dr. Jonathan Atwood of the Manomet Bird Observatory, Manomet, Massachusetts. As is the standard practice in the scientific community, the Service did not request, nor was it offered, the data collected and used by Dr. Atwood in reaching his conclusions. Instead, the Service depended upon the conclusions published by Dr. Atwood in a peer-reviewed scientific article on the subspecific taxonomy of the California gnatcatcher (Atwood 1991).

In response to a suit filed by the Endangered Species Committee of the Building Industry Association of Southern California and other plaintiffs, the United States District Court of the District of Columbia vacated the listing of the coastal California gnatcatcher because the Service did not make available Atwood's data for public review and comment. In response to the court decision, Dr. Atwood released his data to the Service, which the agency made available to the public for review and comment on June 2, 1994 (59 FR 28508). On June 16, 1994, the court reinstated threatened status for the coastal California gnatcatcher until the Secretary of the Interior determines in a finding whether the listing should be revised or revoked in light of his review of the subject data and public comments received during the comment period. As a result of the court orders of July 27, 1994, and September 30, 1994, the Service extended the comment period to December 1, 1994, (59 FR 38426, 59 FR 44125, and 59 FR 53628).

The Service received 11 substantive comments in response to the request for public comments on Dr. Atwood's data and analysis. Of particular note, Dr. William Link mathematician, and Grey Pendleton, biometrician, with the National Biological Survey (NBS) conducted new analyses of these data